

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE

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DEAN SMITH,

Plaintiff,

v.

PROFESSIONAL BILLING &  
MANAGEMENT SERVICES, INC., et  
al.,

Defendants.

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Civil No. 06-4453 (JEI)

**FINAL JUDGMENT**  
**ORDER APPROVING SETTLEMENT**

This matter is before the Court on the parties' joint request that this Court grant final approval of the parties' class action settlement; and the parties consenting to the jurisdiction of this Court to enter this Order; and the Court noting that on November 21, 2007, it issued an Opinion and Order granting plaintiff's Motion in Support of Settlement and Approval of Class Notice [Doc. Nos. 20, 21] (see Smith v. Professional Billing & Management Services, Inc., 2007 WL 4191749 (D.N.J. Nov. 21, 2007)); and the Court further noting that in its Opinion and Order it preliminarily approved the parties' Settlement Agreement as fair, reasonable and adequate, and conditionally certified for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), the class defined in the parties' Settlement Agreement; and the Court further noting

that its Opinion and Order approved the proposed form and manner of service of the Notice of Proposed Class Action Settlement, Fairness Hearing, Final Settlement Approval and Distribution of Counsel Fees ("Notice"); and the Court further noting that on November 21, 2007 it also entered an Order "Granting Preliminary Approval of Proposed Settlement Between Class Plaintiff and Defendants, Approving Form of Notice and Authorizing Dissemination of Class Notice to Potential Class Members" [Doc. No. 21]; and the Court having conducted a final fairness hearing on February 8, 2008; and no person having appeared at the fairness hearing to object to the parties' settlement; and the Court having received plaintiff's March 31, 2008 letter [Doc. No. 28] advising the Court that appropriate notice pursuant to the Class Action Fairness Act, 28 U.S.C. §1715, was given and no responses and objections have been received; and plaintiff further requesting that this Order be entered; and for the reasons stated on the record at the February 8, 2008 fairness hearing; and for the reasons stated herein; and good cause appearing for the entry of this Order,

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED this 3rd day of April, 2008, as follows:

1. This Court certifies the following Settlement Class ("Settlement Class"), pursuant to Fed. R. Civ. P. 23(a) and (b)(3): "All 244 known natural persons who were sent correspondence similar to the attached Exhibit by the

defendants." The class claims and issues are those identified in plaintiff's complaint [Doc. No. 1].

2. The Court finds that:

- a. The Settlement Class is so numerous that joinder of all members is impracticable, satisfying the requirements of Fed. R. Civ. P. 23(a)(1);
- b. There are questions of law or fact common to the Settlement Class, satisfying the requirements of Fed. R. Civ. P. 23(a)(2);
- c. The claims of the representative plaintiff are typical of the claims of the Settlement Class, satisfying the requirements of Fed. R. Civ. P. 23(a)(3);
- d. The representative plaintiff will fairly and adequately protect the interests of the Settlement Class, satisfying the requirements of Fed. R. Civ. P. 23(a)(4);
- e. Questions of law or fact common to the members of the Settlement Class predominate over questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy, satisfying the requirements of Fed. R. Civ. P. 23(b)(3); and

- f. This action is manageable as a class action.
3. The Court finds that the parties have complied with the notice requirements set forth in this Court's Order Granting Preliminary Settlement Approval.
  4. The Court finds that due and adequate notice was provided pursuant to Fed. R. Civ. P. 23 to all members of the Settlement Class, notifying the Settlement Class of, inter alia, the pendency of this action and the proposed settlement with the defendants. The Notice provided was the best notice practicable under the circumstances and included individual notice by United States First Class Mail to all members of the Settlement Class who could be identified through reasonable effort. The Notice fully complied in all respects with the requirements of Fed. R. Civ. P. 23 and due process.
  5. The Court finds that only one member of the Settlement Class, Mr. Nikolaos Hatzinakis, and no others, timely and validly requested to be excluded from the Settlement Class and accordingly is not included in or bound by the final judgment being entered pursuant to this Order.
  6. The Court finds that the Settlement Agreement between plaintiff and defendants Professional Billing & Management Services, Inc. and Sandra Kireta Chilcote, is fair, reasonable and adequate to the Settlement Class

within the meaning of Fed. R. Civ. P. 23. The Settlement Agreement is hereby approved pursuant to Fed. R. Civ. P. 23(e).

7. Donald M. Doherty, Jr., Esquire, of Friedman Doherty, LLC, is approved as Class Counsel.
8. In accordance with his initiation and diligent prosecution of this matter and according due weight to the business risks associated with prosecuting this case incurred by the lead plaintiff, and in further consideration of his diligent efforts to prosecute this case on behalf of the class, the Court approves the payment to lead plaintiff, Dean Smith, an incentive stipend of Two Thousand Five Hundred Dollars (\$2,500). Said sum shall be paid from the defendants separate and apart from the sum due to the Class.
9. Class Counsel is hereby awarded attorneys' fees and costs in the total amount of Seventeen Thousand Five Hundred Dollars (\$17,500). Said sum shall be paid to plaintiff's attorneys by defendants separate and apart from the settlement sum due the class. This payment includes all costs awarded and time associated with the further administration of the claims processing, even if the costs and time have not yet been incurred.
10. All Released Claims (as defined in the Settlement

Agreement) of class plaintiff and the Settlement Class that were asserted against the settling defendants and the releasees (as defined in the Settlement Agreement) in the action are dismissed with prejudice, and, except as provided for in the Settlement Agreement, without costs. Nothing contained in this Order shall affect the claims of the class plaintiff and the Settlement Class against any defendants other than the settling defendants and any persons or entities related to the settling defendants who are defined as releasees under the Settlement Agreement.

11. Without affecting the finality of this Final Judgment in any way, this Court hereby retains continuing jurisdiction for the purpose of, inter alia, implementing and enforcing the Settlement Agreement.
12. The Clerk of the Court is directed to close this file.

s/Joel Schneider  
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JOEL SCHNEIDER  
United States Magistrate Judge

Case 1:06-cv-04453-JEI-JS Document 21 Filed 11/21/2007 Page 6 of 7

Case 1:06-cv-04453-JEI-JS Document 17 Filed 11/07/2007 Page 2 of 3



Professional Billing  
& Management Services, Inc.

P.O. Box 977 • 5250 Technology Avenue • Chambersburg, PA 17201 • (717) 263-5562 • Fax (717) 363-7001  
President - Sandra Kireta Chilcote  
www.pbmsinc.com

September 12, 2006

Dear [REDACTED]

RE: Account Number - [REDACTED]  
For Date of Service - [REDACTED]

Our records indicate that on [REDACTED] our client, Professional Anesthesia Consultants, P.C. (PAC) provided [REDACTED] services for your [REDACTED] procedure at [REDACTED] at [REDACTED]. As a result of a recently conducted audit of patient accounts, we have discovered that PAC was not paid for the above referenced service. The total outstanding amount of your account is \$[REDACTED]. Enclosed is an account summary for your review.

The reasons for non-payment of an account will vary from patient to patient. In order to settle your balance, however, we ask that you contact us within ten (10) days of your receipt of this letter at (800) 827-3458, extension 147 so that we can appropriately resolve your account.

Thank you in advance for your prompt response.

Sincerely

Professional Billing & Management Services, Inc.

Enclosure

EXHIBIT